IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No. 10572 of 2005

Between:

M.B.U. Sekhar, S/o. M. Veerabhadra Rao,
R/o. Door No. 33-1-1, Subhash Road, Kakinada,

East Godavari District.

..... PETITIONER

AND

The Municipal Corporation of Kakinada, Kakinada,

East Godavari District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of Mandamus, declaring action of the respondent in seeking to demolish the commercial establishment bearing Door No. 31-1-1, Subhash Road, Kakinada, East Godavari District, without following due process of law, as arbitrary, illegal and violative of principles of nature justice, apart from violative of the Fundamental Right guaranteed under Article 19(1)(g) and the Constitutional Right guaranteed under 300 A of the Constitution of India and consequently direct the Respondent not to demolish the schedule premises.

Counsel for the Petitioner: MR.C.V.R.RUDRA PRASAD

Counsel for the Respondent: .

The Court at the stage of admission made the following :

ORAL ORDER :

Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent.

The petitioner seeks a Writ of Mandamus declaring the action of the respondent in seeking to demolish the commercial establishment bearing Door No. 31-1-1, Subhash Road, Kakinada, East Godavari District, without following due process of law, as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P.
No. 21198 of 1997 and batch, dated 03.02.1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/ objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings

Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

The learned standing counsel appearing for the respondent does not dispute the above legal position.

Accordingly, the writ petition is disposed of directing the respondent not to demolish the commercial establishment bearing Door No.31-1-1, Subhash Road, Kakinada, East Godavari District, without following the guidelines issued by the Division Bench of this Court in W.P.No.21198 of 1997 and batch, dated 03.02.1998. No costs.

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G.ROHINI, J.

Dated: 28th April, 2005.

CS

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Municipal Corporation of Kakinada,

Kakinada, East Godavari District.

2. 2 CD copies

*Form-NIC-OGS/WP{**VSMI**}*